

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KATE SVALDI

**Plaintiff,**

V.

CAROLYN W. COLVIN,

Defendant.

No. C12-1710RSL

ORDER REMANDING MATTER TO  
COMMISSIONER OF SOCIAL  
SECURITY

This matter comes before the Court on the Report and Recommendation of the Honorable James P. Donohue, United States Magistrate Judge. Having reviewed the Report and Recommendation, plaintiff's objections, the Commissioner's reply, the administrative record ("AR"), and the remainder of the record, the Court finds as follows:

(1) The Court adopts the first six sections of the Report and Recommendation.

(2) The Commissioner's denial of benefits must be affirmed if it is based on the proper legal standards and the findings are supported by substantial evidence in the record as a whole. Schneider v. Comm'r of Soc. Sec. Admin., 223 F.3d 968, 973 (9th Cir. 2000). Substantial evidence means more than a scintilla, but less than a preponderance. Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995). Whether there is substantial evidence supporting the ALJ's decision must be determined in light of the record as a whole: the district court must consider both supporting and contrary evidence in the record. Vasquez v. Astrue, 572 F.3d 586, 591 (9th

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1 Cir. 2009).

2 The record the ALJ reviewed contained substantial evidence supporting a finding  
3 that plaintiff was not disabled, but that is not the only permissible interpretation. The record also  
4 contains ample evidence of disability. Based on the then-existing record, the ALJ interpreted  
5 Dr. Agnani's December 2010 report as evidence that plaintiff could not perform past relevant  
6 work, with the implication being that the treating physician had not ruled out only employment  
7 that required frequent interaction with the public. Dr. Agnani has since issued another report  
8 opining that plaintiff is not able to engage in gainful employment at all and that she suffers from  
9 a chronic condition. Given that the line between disabled and not disabled is razor thin in this  
10 case, the Court cannot say with assurance that Dr. Agnani's February 2012 opinion would have  
11 been immaterial to the ALJ's analysis. Although the Court will not reweigh the evidence in the  
12 record, try issues *de novo*, or substitute its judgment for that of the Commissioner (Brown v.  
13 Apfel, 192 F.3d 492, 496 (5th Cir. 1999)), it will remand this matter to the Commissioner for a  
14 determination of whether the record as a whole, including the February 2012 opinion, warrants a  
15 finding of disability. See McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 1989) (remand is  
16 appropriate where the Commissioner is in a better position than the court to evaluate the  
17 evidence).

18 (4) Because the ALJ's other findings (including the credibility determination, her  
19 evaluation of the lay testimony, and the disability determination) turned in large part on the  
20 original assessment of the medical evidence, those determinations are also remanded to the  
21 Commissioner for further proceedings as appropriate.

For all of the foregoing reasons, this matter is hereby REMANDED to allow the Commissioner of the Social Security Administration. In reconsidering this case, the Commissioner may hold further hearings and/or receive additional evidence.

Dated this 4th day of November, 2013.

Mrs Casnik

Robert S. Lasnik  
United States District Judge